

AL MCZEAL VS. WASHINGTON MUTUAL BANK., ET AL

MOTION & ORDER TO CONSOLIDATE TWO CASES

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

United States Bankruptcy Court
Southern District of Texas
FILED

JUN 20 2006

HOUSTON DIVISION

Michael N. Milby, Clerk

**Al McZeal,
Plaintiff**

vs.

**WASHINGTON MUTUAL BANK, FA
Defendants, et al**

Civil Action No: 4:06-CV-00876

JURY TRIAL DEMANDED

Honorable Judge Gray H. Miller
Magistrate Honorable Stephen Wm. Smith

MOTION TO CONSOLIDATE CASES

Civil Action No:4:06-CV00876

&

Civil Action No: H-06-897
Honorable Vanessa D. Gilmore

**MOTION OF PLAINTIFF AL MCZEAL TO CONSOLIDATE 2 CASES IN
ACCORDANCE WITH RULE 42(A) AND LOCAL RULE 7.6**

Respectfully Submitted



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I.**INTRODUCTION**

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, and Local Rule 7.6 (consolidation) plaintiff Al McZeal ("Plaintiff") hereby moves to consolidate this action for all purposes with Case Number H-06-897 presently pending in this Southern District before the Honorable Vanessa D. Gilmore , which is a related action brought in this district by the plaintiff in a separate removal action which was filed one day later after the commencement of this present case.

(II)**BACKGROUND INFORMATION**

This civil action presently before this court was filed on March 16, 2006 by the plaintiff Al McZeal. However on March 17, 2006 a removal action was also removed to federal court from a Justice of the Peace court where an eviction proceeding was pending. The removal case that was filed bears the case number H-06-897 (presently pending before the Honorable Vanessa D. Gilmore) and was filed one (1) day after the original civil action. Therefore, this civil action pending before this court is the oldest case, and the motion to consolidate is being filed in this case in accordance with the local rules for this district. Plaintiff now moves to consolidate the cases in order to avoid

needless duplication of effort and because the cases are similar in nature and have common questions of law and fact.

(III)

In support of this motion to consolidate the two (2) case, plaintiff Al McZeal respectfully shows the court the following:

- (1) Counsel for the Washington Mutual Bank, FA and counsel for the other defendants is in favor of consolidation of its action with this case presently pending before this court.
- (2) On May 25th 2006 the Honorable Vanessa D. Gilmore in Case number H-06-897 ordered the parties to file a motion to consolidate in this court consolidating both cases (See Attached Exhibit "A"). A courtesy copy of this motion is also being provided to the Honorable Vanessa D. Gilmore.
- (3) Both cases contain a common question of law or facts which as such, satisfy the only requirement for consolidation under Rule 42(a).
- (4) The common questions of law and fact include, but certainly are not limited to, the following: (i) Unlawful Foreclosure, Unlawful Eviction, Proceedings, Malicious Prosecution, FRAUD, unlawful conversion, racketeering, Fair Debt Collection Practices, and Suit and declaratory judgment to determine rights of possession and ownership.
- (5) Consolidating these two (2) cases in this district would appear to be in the best interest of all parties and will not prejudice any particular party.
- (6) Consolidation of theses cases will serve the interest of justice, and will also among other things, will produce significant savings of time and resources for the Court and the parties. In contrast, having related identical cases proceed in a parallel fashion would generate needless duplication of effort for all parties concerned, and would place an unnecessary burden on the court.

(IV)

POINTS AND AUTHORITIES

Rule 42(a) of the Federal Rules of Civil Procedure permits a court to consolidate actions pending before it if those actions involve "a common question of law or fact." That standard "is an expansive one, allowing consolidation of the broad range of cases brought in federal court." 8 Moore's Federal Practice § 42.10[1][a], at 42-9 (3d ed. 1998). District courts have broad discretion to consolidate actions that satisfy this expansive standard if, under the circumstances, such consolidation will serve the interests of justice. See, e.g., *In re Air Crash Disaster at Stapleton Int'l Airport*, 720 F. Supp. 1505, 1513 (D. Colo. 1989). Consolidation has been found to be appropriate in virtually every kind of action that can be brought in federal court, including antitrust actions. See, e.g., *State of Ohio ex rel. Montgomery v. Louis Trauth Dairy, Inc.*, 163 F.R.D. 500, 503 (S.D. Ohio 1995). Consolidation is unquestionably appropriate in this instance.

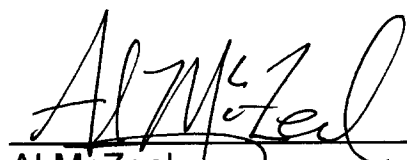
(V)

CONCLUSION

Consolidation will achieve substantial efficiencies and savings without sacrificing fairness. Because both actions were filed only one (1) day from each other same day, they are at the exact same point in the pretrial process. As a result, consolidation will not cause the trial of one action to be delayed while discovery is completed in the other action, as is sometimes the case. Moreover, given that the parties have been served and have already begun discovery in this case, it would appear proper that both cases could be consolidated into one case for all practical purposes. All parties appear to be in agreement that these cases should be consolidated.

For the foregoing reasons, plaintiff Al McZeal respectfully requests that this Court consolidate this action for all purposes with Civil Action No: H-06-897 presently pending before the Honorable Vanessa D. Gilmore for efficiency purposes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006 the foregoing document has been personally served on all counsel in the hearing set for June 20, 2006 at 10:30am and of record by United States first class mail, with sufficient postage affixed, and forwarded to the last known address of record to wit:

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Al McZeal